

CURRENT DEVELOPMENTS

This is about globalization, and there is work to do for international legal scholarship

A personal reflection on the election of Donald
Trump to the US Presidency

DANA SCHMALZ — 11 November, 2016



The last two days have been filled with consternation, anger, and the attempt to situate what the election of Donald Trump means. What it means in terms of causes, and in terms of the political challenges we are confronted with more generally. And in terms of consequences, within the United States of America and around the world. This election will affect all our lives, but to a higher degree the lives of

those belonging to the groups targeted by Trump's campaign and his envisaged policies: the lives of immigrants, racial and religious minorities, LGBTQ, briefly all those, whose discrimination is at stake in the tirades against "political correctness".

International law will not help us in this

Does international law have anything to say to this? There clearly are points where the envisaged policies of the President-elect are in tension with international norms and agreements. The International Covenant of Civil and Political Rights (ICCPR) obliges states to guarantee "equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". It provides that "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law". It addresses the equality of women and men. But let's not fool ourselves, international law will not help much in the fight against the rise of hate and discrimination. It will not help much against developments of persons being pulled of flights when speaking Arabic, of growing fears to wear visible signs of religious affiliation, or of women being ridiculed when speaking out against sexual harassment.

To some greater extent than international law it will be the civil rights law of the United States that will have a role to play. The American Civil Liberties Union (ACLU) has made clear that if Donald Trump were to implement the policies he built his election campaign on, these will become issues challenged in court. The deportation of undocumented immigrants, the ban of Muslims to enter the US, the

punishment of women for accessing abortion, and the reauthorization of forms of torture are among the proposed policies that the ACLU enumerates and that Trump should have a hard time defending in court. Civil rights law will be important in these upcoming years. But while it can create obstacles to systematic discrimination and offer remedies for some of the most blatant cases, it will not be able counter the rhetoric of enmity and the creation of a climate of fear and exclusion.

There are other topics where the positions that we have heard from Donald Trump during his campaign touch upon questions of international law: The proposal of building a wall at the border to Mexico and making Mexico pay for it involves the threat of resorting to economic coercion, which in the proposed form would violate international law. Trump's denial of climate change and his suggested energy policies are in direct opposition to the Paris Agreement, which the United States have signed and ratified, and which entered into force in October. And his remarks on targeting the families of terrorists go against the most basic principles of international law and of law in general. International law in that sense can constitute a normative baseline. This is not a lot, but it is something.

There is a task to normatively reconstruct globalization

More than the interpretation of this normative baseline in opposing certain policies, however, the task of international legal scholarship has to do with the reasons for this election. There is of course a great deal of disagreement about reasons. There were predictions, there are mutual recriminations, there are statistics about the voting constituencies. There are many features that make this a

singular American tragedy. But there is also broad agreement that the issues of this election are not completely distinct from the ones faced in the Brexit-vote. And that they are not distinct from the decisions voters will have to make in France and other states in the upcoming year.

These votes are to a great extent about globalization. Depending on the perspective, the results are being described as the proof of how liberal elites have neglected or underestimated the fears of people losing their perspectives and securities. As the effect of a global elite creating a system that works for them, but not for the rest. As the outcome of denying the importance of economic issues and of lacking a proper working-class politics. Or as a display of white resentment. As the rebellion of people sensing that it's time to hand in some of the privileges they have held for decades if not centuries on the backs of others. As a racism which cannot be explained away with working-class fears.

Both these perspectives have their valid arguments, and both have everything to do with globalization. In the last 25 years, we saw a period of enthusiasm over a more united world, the rise of ever more international organizations with ever greater power. We also saw how ideas about a united world in some circumstances became vehicles for oppression and for a sort of informal imperialism of particular world-views. There were important points of criticism of the liberal dream about a global world oriented towards human rights and equipped with strong institutions to defend them. And there was growing skepticism as to the power of international courts and agencies, as to the boundless desirability of free trade, as to the very potential of international norms to navigate us in the pressing conflicts of our times. What's left today apart from disillusion?

An incredibly important task, and that is the task to normatively reconstruct globalization. There is valid criticism of globalization as a system in which some few are served the fruits and most others bear the costs – but if this criticism merges with the voices proclaiming a return to the nation state system, it is blindfolding itself. Not only is there no way back from many of the interdependencies that make international cooperation necessary. But also has the nation state framework never been an ideal system securing rights for everyone. It has done so for some, at the expense of others, and these expenses are particular visible at the borders of the so-defined political community. To trace these limits and contradictions in the nation state framework, to re-describe the role of states, to make out reasonableness in the evolution of globalization, and to provide a solid critique – all this is the task of international law scholarship, and of course of many neighboring disciplines.

Being concerned with the manifold details of international regulations and decision, with systematizing developments in various fields such as the laws of armed conflict, trade law, refugee law, environmental law, financial markets, health governance, and international criminal law, scholarship in international law has a task of translation. Of translating the conflicting or overarching norms of these developments in such a way as to enable a political debate about them, of making the key normative questions accessible. This is certainly not to glorify the role of international law. The fusion of seemingly neutral norms with existing power inequalities, in particular economic inequalities and legacies of colonialism, has often worked to deepen global injustices and contributed to exploitation. The perception of international law either as mere instrument of power or as formalistic preservation of the status quo has played its role

in making globalization a label for unrestrained domination of the market over political decisions. But for these exact reasons, there is work to do.

The election of Donald Trump as US President or the choice of Britain to exit the European Union were importantly framed by the normative questions that globalization raises. They both came down to a choice between representatives of a liberal embrace of economic flexibilization on the one hand, and a demagogic nationalism on the other. It is crucial to move beyond such a binary, beyond any doubt. There is a call for a new left, which seriously commits to economic concerns and questions liberal paradigms not in the vocabulary of resentment and chauvinism, but by engaging in a redistribution from the top. There is certainly a whole range of positions beyond the described binary, and room for a lot of reasonable disagreement. But the political questions we face will not turn into easy choices. A new left that hears the concerns of a disenfranchised part of its country's population might be better positioned to oppose demagogic nationalism than the liberalism that Hillary Clinton embodies – yet as long as it avoids a serious commitment also across borders, it is just a more pleasant version of the same shortsighted dream of returning to the old frame. To reconstruct the reasonableness in globalization means making visible that thinking across borders has always been unavoidable, and certainly is unavoidable today. But first and foremost it means to show the room for organizing politics against this global horizon.

Dana Schmalz is a co-editor of the blog. She is a doctoral candidate at Frankfurt University and an LL.M-student at the Cardozo School of Law, New York.

ISSN 2510-2567

Tags: *Globalization , International Legal Scholarship*



Print



Facebook 55



Twitter



Email

Related

Symposium: Labour
Standards in a
Globalised Economy

2 November, 2015

In "Labour Standards in
a Globalised Economy"

Insights from the
Practitioner of
International Law

8 October, 2014

In "Interview"

Simple international
rights, global
constitutionalism, and
scholarly methods

1 February, 2016

In "Debating "Beyond
Human Rights""

PREVIOUS POST



Refugees at Our Backyard

NEXT POST

The Arab Refugee Paradox



No Comment

Leave a reply

Logged in as ajv2016. [Log out?](#)

SUBMIT COMMENT

☐ Notify me of follow-up comments by email.

☐ Notify me of new posts by email.